

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR
DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION
SERVICES
AND
IBM CORPORATION**

The undersigned hereby represents, acknowledges, and agrees as follows:

1. The undersigned is a "Participating Entity" which shall be defined as Participating Entity states of WESTERN STATES CONTRACTING ALLIANCE (hereafter "Participating Entity"): (i) which requests equipment pursuant to the terms and conditions of the STATE OF UTAH STATEWIDE CONTRACT AR1474 (hereafter the "Master Agreement") by executing this Participating Addendum ("PA"); and, (ii) whose request for the sale of equipment by IBM Corporation ("IBM"), at its sole discretion, is accepted by IBM executing this PA.

2. The undersigned Participating Entity is executing this PA for the purpose of purchasing data communications equipment from IBM, pursuant to the Master Agreement by and between State of Utah and IBM. Participating Entity shall be subject to all terms and conditions of this PA and the Master Agreement.

3. Scope: The general purpose of this Contract is to provide: Data Communications Equipment and Associated OEM Maintenance & Training. Other IBM value-add services included in the Master Agreement are excluded from the scope of this PA between State of Washington DIS and IBM.

4. Changes to the Master Agreement specific to the State of Washington, specified in the Attachment(s) to this PA, are incorporated herein by this reference.

1. Primary Contact/ Legal Notices:

5.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

5.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

5.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon IBM or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. IBM and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

5.4. For Participating Entity:

State of Washington Department of Information Services	
Attn: TSD Contract Administrator	
<i>Mailing Address:</i>	<i>Street Address:</i>
PO Box 42445	2411 Chandler Court SW
Olympia, WA 98504	Olympia, WA 98502
Phone: (360) 725-4200	
Fax: (360) 664-0711	
E-mail: mcadmin@dis.wa.gov	

5.5. For IBM:

IBM	<i>With Copy To:</i>
Attn: Michael Andritch	Attn: Tom Hasting
410 11 th Ave SE	
Suite 200	15400 SW Koll Parkway
Olympia, WA 98501	Beaverton, OR 97006
Phone: 360-705-8880	Phone: 503-578-2355
Fax: 360-352-6844	Fax: 503-578-2355
E-mail: mjandrit@us.ibm.com	E-mail: thasting@us.ibm.com

6. Lease Agreement. Lease agreement terms and conditions have not been approved for use by Purchaser(s) under this PA.

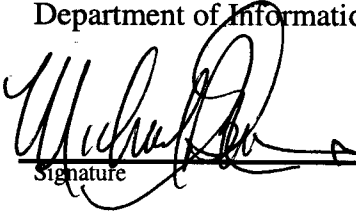
7. This PA together with its Attachment(s) and the Master Agreement, Number AR1474, together with its Attachment(s), (administered by the State of Utah), set forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the

terms and conditions of this PA and the Master Agreement, shall not be added to or incorporated into this PA or the Master Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms. All Orders issued by Purchasers within the jurisdiction of this PA shall include Master Agreement Number AR1474.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Approved

State of Washington
Department of Information Services


Signature

Michael B. Emans

Print or Type Name


Assistant Director

Title

3/10/03
Date

Approved

IBM Corporation


Signature

Keith Unterschute

Print or Type Name

Network Sales Specialist

Title

3/5/03
Date

Approved as to Form

State of Washington

Office of the Attorney General

Approved as to form by Chip Holcomb
via email dated 3/4/03, attached

Signature

Chip Holcomb

Print or Type Name

Senior Counsel, AGO

Title

Date

Contractor Information

Contractor's UBI Number: 409000208

Minority or Woman Owned Business
Enterprise

Yes _____ No ☒
(Certification Number)

Kirk, Marie (DIS)

From: Holcomb, Chip (ATG)
Sent: Tuesday, March 04, 2003 11:42 AM
To: Kirk, Marie (DIS)
Subject: RE: IBM-WA PA

As per our conversation, looks OK

Chip Holcomb
Senior Counsel, Attorney General's Office
P.O. Box 40108
905 Plum St., Bldg. 3
Olympia, WA 98504-0108
voice: (360)753-9671
fax: (360) 586-3593
email: chiph@atg.wa.gov

-----Original Message-----

From: Kirk, Marie (DIS) [mailto:MarieK@DIS.WA.GOV]
Sent: Monday, March 03, 2003 4:12 PM
To: Holcomb, Chip (ATG)
Subject: IBM-WA PA

Here's the IBM PA. I have highlighted the areas that call for your attention. I've enclosed the Utah Master Agreement also.

Not sure how to get approval as to form, since I have one more round with IBM. Might happen tomorrow morning, once I get your feedback on what we have now. Anyway . . .

<< File: CHIP 03-03-03 IBM-WA PA.doc >>
Contract.doc >>

<< File: IBM -Utah WSCA

**ATTACHMENT 1
WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR
DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
IBM CORPORATION**

1. DEFINITIONS.

“Acceptance Date” shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser’s written notification to Contractor of acceptance of the Products; (ii) for other Products, the twentieth (20th) Business Day after the date of shipment.

“Confidential Information” shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or Purchaser security information.

“Contractor”/“Offeror”/“Vendor” shall mean IBM Corporation, its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

“DIS” shall mean the State of Washington, Department of Information Services.

“Effective Date” shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

“Order Document”/“Order” shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

“Participating Addendum” or “PA” shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

“Participating Entity” shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

“Product(s)” shall mean data communications equipment, specifically, Cisco, Lucent, Nortel or Alcatel routers, Cisco, Extreme, Nortel or Alcatel switches, and Cisco LAN/WAN Wireless, associated components, software and documentation, as specified in the Master Agreement. Stand-alone voice equipment is specifically excluded from the definition of Products that can be sold under this PA.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean DIS and any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. **“Purchaser”** shall mean the same as authorized Purchasing Entities, Participating Entities, Procuring Agencies, or Customer.

“Service(s)” shall mean installation, training and maintenance services for eligible Products.

“Subcontractor” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term **“Subcontractor”** means Subcontractor(s) of any tier. For purposes of this PA, the term **“Subcontractor”** does not include the original equipment manufacturers (OEMs) identified in the Master Agreement (i.e., Cisco, Nortel, Alcatel, Lucent and Extreme) or any of such OEMs’ authorized service providers for maintenance or training.

2. ORDER OF PRECEDENCE. In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (a) Sections of this PA, including its Attachments;
- (b) WSCA Master Agreement Number AR1474;
- (c) Contractor’s Response to Request for Proposal (RFP) LW1907;
- (d) Utah’s Request for Proposal LW1907;
- (e) The administrative terms contained on Purchaser’s Order Documents such as description of product or service ordered, quantity, billing address, etc., unless otherwise agreed to at the time of order.

3. SURVIVORSHIP. All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance,

cancellation or termination of this PA or Master Agreement shall so survive. In addition, the terms of the sections titled **Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence; Publicity; Patent and Copyright Indemnification.**; and **Disputes** shall survive the termination of this PA.

4. **ADVANCE PAYMENT PROHIBITED.** No advance payment shall be made for Products or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance may be made in advance on an annual basis in accordance with the applicable OEM manufacturer or service providers terms available for the maintenance services under the Master Agreement.

5. **TAXES.** Purchaser will pay sales and use taxes, if any, imposed on the Products or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property.

6. **INVOICE / PAYMENT.** Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR1474;
- b) Purchaser's name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of delivery and/or date(s) of installation and set up;
- f) Price for each item, or manufacturer's list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges; and
- l) Total invoice price

6.1. Payment for completion of a Order is due within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later. After forty-five (45) days Contractor may assess overdue account charges up to a maximum rate of one percent (1%) per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a

check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Products or Services or receipt of properly prepared invoice, whichever is later.

6.2. Payments for maintenance services may be made in advance on an annual basis in accordance with the applicable OEM manufacturer or service providers terms available for the maintenance services under the Master Agreement.

7. **TITLE.** Upon receipt of payment therefor, Contractor shall convey to Purchaser good title to any equipment, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

8. **ACCEPTANCE TESTING.** Contractor agrees that Purchaser may choose to require formal acceptance testing on Products purchased under the PA. Such acceptance testing criteria shall be mutually negotiated and agreed to by both Purchaser and Contractor on an individual case basis. In that case, no payment will be authorized until the Product has met the standard of performance and has been accepted, in writing, by Purchaser.

9. **CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS.**

[Note: This language is from the Washington State Agreement 92-PUR-010.]

9.1. Any written commitment by IBM within the scope of this PA shall be binding upon IBM. Failure of IBM to fulfill such a commitment may constitute breach and shall render IBM liable for remedies due the Customer under the terms of this PA.

9.2. For purposes of this PA, a commitment by IBM, which must be in writing, is: (i) prices and options committed to remain in force over a specified period(s) of time; (ii) any warranty or representation made by IBM in a proposal as to hardware or software performance or any other physical, design or functional characteristics of a machine, software package, system or other product; (iii) any warranty or representation made by IBM concerning the characteristics or items in (ii) above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal; (iv) any modification of or affirmation or representation as to the above which is made by IBM in writing whether or not incorporated into a formal amendment to the proposal in question; and (v) any representation by IBM in a proposal or supporting documents as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this PA.

10. **PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.**

10.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of

information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

10.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.

10.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this PA. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

10.4 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.

10.5 Contractor may disclose, publish, disseminate, and use Confidential Information that is:

- a) already in its possession without obligation of confidentiality;
- b) developed independently;
- c) obtained from a source other than Purchaser without obligation of confidentiality;
- d) publicly available when received, or subsequently becomes publicly available through no fault of Contractor; or
- e) disclosed by Purchaser to another without obligation of confidentiality.

10A. RESIDUALS. Either Contractor or Purchaser may use in its business activities the ideas, concepts and know-how contained in disclosed Confidential or Proprietary Information that are retained in the memories of Contractor's or Purchaser's employees who have had access to the Confidential or Proprietary Information under this PA. Nothing in this paragraph permits either party to disclose the source of information, or any financial, personal, medical, statistical or personnel data or business plans of the other party.

11. PUBLICITY. Entering into this PA with Contractor is not in any way an endorsement of Contractor or Contractor's Services by DIS or Purchasers and shall not be so construed by Contractor in any advertising or other publicity materials.

- 11.1 Contractor agrees to submit to Purchaser or DIS, all advertising, sales promotion, and other publicity materials relating to this PA or any Product or Service furnished by Contractor wherein Purchaser's or DIS' name is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's or DIS' name with Contractor's Products or Services may, in Purchaser's or DIS' judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of Purchaser, or DIS *prior* to such use.
- 11.2 DIS hereby acknowledges and agrees that Contractor will post pricing for this PA on its web site that contains other advertising for Contractor. Contractor acknowledges and agrees that DIS will post a copy of the Master Agreement and of this PA on its Technology Mall, or successor website, together with Contractor's logo and a link to Contractor's WSCA Data Communications pricing.

12. RECORDS ADMINISTRATION. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this PA. These records will be retained by the Contractor for at least six (6) years after the contract terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later. The State's or any third-party's access to Contractor's books and records shall not include access to personnel, profit, or internal cost data. In addition, the parties shall mutually agree to what documents and records the State or any third-party shall gain access prior to the State or any third-party accessing such records and/or data. The State or any third-party shall bear all costs associated with all audit activity. Contractor understands that the State will periodically perform "invoice audits" when Contractor will be requested to provide specified copies of Purchaser invoices. Contractor will provide such invoices within 30 days of the request at no charge to the State.

13. PATENT AND COPYRIGHT INDEMNIFICATION.

[Note: This indemnification language is from the Washington State Agreement 92-PUR-010.]

13.1 IBM will, at its expense, defend the State and/or Customer against a claim that machines or programming supplied hereunder infringes a U.S. patent or copyright, or that the machines' operation pursuant to a current release and modification level of any programming supplied by IBM infringes a U.S. patent, IBM will pay resulting costs, damages and attorney's fees finally awarded provided that: (i) The Customer promptly notifies IBM in writing of the claim; and (ii) IBM has sole control of the defense and all related settlement negotiations.

13.2 If such claim has occurred, or in IBM's opinion is likely to occur, the Customer agrees to permit IBM at its option and expense, either to procure for the Customer the right to continue using the machines or programming or to replace or modify the same so that they become non-infringing and functionally equivalent. If neither of the foregoing alternatives is reasonably available, the Customer agrees to return the machines or programming at IBM's risk and expense upon written

request by IBM. In the event the product has been installed less than one year, transportation to the initial installation site paid by the Customer shall be refunded by IBM. No termination charges will be payable on lease or rental machines returned hereunder, and the Customer will pay only those charges which were payable prior to the date of such return. For purchased machines returned hereunder, IBM will credit the Customer an amount equal to the original purchase price, reduced by one-sixth thereof for each year the machine has been installed as a purchase, lease and/or rental machine with the Customer. The credit for fractional parts of a year shall be prorated on the basis of 365 days per year.

13.3 IBM has no liability for any claim based upon:

- a) the combination, operation or use of any machines or programming supplied hereunder with equipment, data or apparatus not supplied by IBM or with any program other than or in addition to programming supplied by IBM;
- b) modifications, which are not authorized by IBM, to the machines or any programming supplied hereunder, if such claim would have been avoided by the absence of such alteration or modification;
- c) use of the program or machine in other than its specified operating environment;
- d) infringement of a non-IBM product alone, as opposed to its combination with Products IBM provides to the Customer as a system under this Agreement.

13.4 The foregoing states the entire obligation of IBM with respect to infringement of patents and copyrights.

14. INSURANCE COVERAGE. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*.

14.1 In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within ten (10) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.

The minimum acceptable limits shall be as indicated below:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;

14.2 Contractor shall pay premiums on all insurance policies. Such insurance certificate(s) shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR1474 and this PA number, 03-01, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

14.3 All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State, subject to the hold harmless/indemnification agreements under this PA, and shall include a severability of interests (cross-liability) provision.

14.4 Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

14.5 Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.

14.6 By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

15. INDUSTRIAL INSURANCE COVERAGE. Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

16. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §12101 *et seq*), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities, and Title 49.60 RCW, Washington Law Against Discrimination. The Contractor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. The Contractor must include this provision in every subcontract relating to purchases by the States to ensure that Subcontractors are bound by this provision.

17. CONTRACTOR'S PROPRIETARY INFORMATION. Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this PA shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

18. DISPUTES.

18.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the TSD Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

18.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

- a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members

will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

- b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

18.3. The determination of the Dispute Resolution Panel may be appealed to a court of competent jurisdiction in the State of Washington.

18.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible

18.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.

18.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

19. DIS ADMINISTRATIVE FEE. All purchases made under this PA are subject to a DIS Administration Fee, to be collected by Contractor and remitted to DIS. The Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice. Contractor shall remit the Administration Fee directly to the TSD Contract Administrator, along with the PA Activity Report. The check shall be payable to Department of Information Services.

20. DIS ACTIVITY REPORTING.

20.1. Contractor shall submit to the TSD Contract Administrator a Quarterly Activity Report of all Product and Service purchases made under this PA. The report shall identify:

- a) The Master Price Agreement (AR1474);
- b) Each Purchaser making purchases during that quarter ;
- c) The total invoice price, excluding sales tax for each Purchaser;
- d) Any adjustments from prior periods, if applicable
- e) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- f) The DIS Administration Fee.

20.2. The Activity Report and the DIS Administrative Fee shall be submitted in accordance with the following schedule:

Quarter Ending

March 31
June 30
September 30
December 31

Report Due

April 30
July 31
October 31
January 31

Contractor shall submit this report according to the layout specified by the TSD Contract Administrator. This report may be corrected or modified by the TSD Contract Administrator with subsequent written notice to Contractor. Quarterly reports are required even if no activity occurred. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

21. FAILURE TO REMIT REPORTS / FEES. Failure of Contractor to remit the Activity Report together with the Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

22. FORCE MAJEURE. Contractor, DIS or Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of Contractor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS or Purchaser, or their respective Subcontractors.

23. E-COMMERCE WEB SITE. Contractor, at its sole expense, shall provide and maintain an Internet website that contains the complete offering of Products and Services and pricing available through the PA. The price list shall be tailored for state of Washington Purchasers, i.e., with the WSCA discount(s) applied. Contractor's website shall provide Purchasers with Product and Service descriptions, specifications, options, and Contractor contact information. A toll-free phone number is provided for product selection and problem resolution assistance. The state of Washington TechMall will link to Contractor's website

24. SUBCONTRACTORS. For services engagements performed under this PA, Contractor may, with prior written permission from DIS, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to DIS or Purchaser for any breach in the performance of Contractor duties. For purposes of this PA, the term "Subcontractor" does not include the original equipment manufacturers (OEMs) identified in the Master Agreement (i.e., Cisco, Nortel, Alcatel, Lucent and Extreme) or any of such OEMs' authorized service providers for installation, maintenance or training.